liable unless it had actual or constructive notice of the condition of the street. *Pemberton* v. *City of Albany et al.* (App. Div. 3d Dept. 1921) 188 N. Y. Supp. 245.

A city must exercise reasonable diligence and care in keeping its streets safe for public travel. *Turner* v. *City of Newburgh* (1888) 109 N. Y. 301, 16 N. E. 344. Where a contract is made, which is such that performance by the contractor will necessarily make the streets unsafe, the city must safeguard them. *Storrs* v. *City of Utica* (1858) 17 N. Y. 104; see *Deming* v. *Terminal Ry. of Buffalo* (1901) 169 N. Y. 1, 10, 61 N. E. 983. But where the plan of the work is reasonably safe and the work lawful the city is not liable for the contractor's negligence. *Uppington* v. *City of New York* (1901) 165 N. Y. 222, 59 N. E. 91. In such a case the city, not being an insurer, is liable only after notice, if the unsafe condition is caused without its fault. *City of Nokomis* v. *Farley* (1903) 113 Ill. App. 161; see *Turner* v. *City of Newburgh, supra,* 305. In New York this need of notice, either actual or constructive, is specifically provided by statute. N. Y. Cons. Laws (1909) c. 55, § 244. In the instant case the work contracted to be done was not such as would necessarily make the streets unsafe. There being no actual notice to the city, constructive notice of the dangerous condition was necessary. Though properly a jury question, the court correctly ordered a new trial since the charge of the lower court was misleading.

NEGOTIABLE INSTRUMENTS — WORDS AFFECTING NEGOTIABILITY — "AS PER CONTRACT."—The indorsee sues as a holder in due course on an order promissory note containing the words "as per contract" in the lower left hand corner. *Held,* three judges dissenting, the instrument is negotiable. *Strand Amus. Co.* v. *Fox* (Ala. 1921) 87 So. 332.

"Non-negotiable" is used in two senses. One, where the promise is conditional, there is no note at all; and two, where the instrument conveys notice, defenses are let in. It is generally held that a reference in a note making it subject to the terms of some extrinsic contract destroys negotiability. *Klots Throwing Co.* v. *Manufacturers' Commercial Co.* (C. C. A. 1910) 179 Fed. 813. What is really meant, however, is that such reference constitutes notice. See Norton, *Bills & Notes* (4th ed. 1914) 44 n. Some courts give the same effect to "as per contract," construing it "subject to the contract." *Continental Bank & Trust Co.* v. *Times Pub. Co.* (1917) 142 La. 209, 76 So. 612. The majority view the words as a mere statement of the transaction not constituting notice. *Waterbury-Wallace Co.* v. *Ivey* (1917) 99 Misc. 260, 167 N. Y. Supp. 719; *National Bank of Newbury* v. *Wentworth* (1914) 218 Mass. 30, 105 N. E. 626; *Snelling State Bank* v. *Clasen* (1916) 132 Minn. 404, 157 N. W. 643. Where the note states that the collateral agreement contains a condition there is no note, since it is a conditional promise. *Titlow* v. *Hubbard* (1878) 63 Ind. 6. Likewise where it specifically incorporates some writing which is conditional. *Chapman* v. *Steiner* (1897) 5 Kan. App. 326, 48 Pac. 607. Some courts are led to say that "subject to" effects incorporation, because, in the particular case, the same result would ensue if they regard it as notice. *Cf. Pope & Ballance* v. *Righter-Parry Lumber Co.* (1913) 162 N. C. 206, 78 S. E. 65. The principal case seems correct in that "as per contract" has no effect, especially since, by their position, the words are largely unrelated to the promise.

NUISANCE—LIABILITY OF ERECTOR AFTER CONVEYANCE OF PREMISES.—The defendant placed a guy wire in a street so as to constitute it a nuisance. After the government had taken over the defendant's telegraph system the plaintiff was injured by running into the wire. *Held,* the defendant is liable, though no longer in possession. *Cumberland Tel. & Tel. Co.* v. *Lawrence* (C. C. A. 5th Cir. 1921) 271 Fed. 89.

One who constructs a nuisance is liable for injuries caused by it though he is no longer in possession of it. *Roswell* v. *Prior* (1701) 12 Mod. *635; *Eastman* v. *Amoskeag Mfg. Co.* (1862) 44 N. H. 143; see *Hyde Park Light Co.* v. *Porter* (1897) 167 Ill. 276, 282, 42 N. E. 206. That he can no longer abate the nuisance is no defense. See *Thompson* v. *Gibson* (1841) 7 M. & W. *456, *461. In New York the grantor of premises is liable only if he still derives some benefit therefrom, or has warranted quiet enjoyment as enjoyed while in his possession. *Slavitz* v. *Morris Park Estates* (1917) 98 Misc. 314, 162 N. Y. Supp. 888; see *Hanse* v. *Cowing* (N. Y. 1869) 1 Lans. 288, 293. Statements are made by some text-writers that the grantor remains liable only when he has done some act to affirm or uphold the original wrong. See 1 Wood, *Nuisance* (3d ed. 1893) 102. The position taken by the New York courts, and these statements, it is submitted are unsound, while the instant case is sound. Thus, one who under contract has erected a nuisance on another's land is subsequently liable for injuries caused by it, though clearly he neither is in a position to abate it, nor does he receive a benefit from it, nor does he do any act after its erection to affirm it. *Thompson* v. *Gibson, supra.* The true basis of the liability as clearly shown by this class of cases is that since the nuisance gives rise to a continuing wrong, the original tort-feasor is liable for any subsequent injuries resulting from it, since his wrong continues as long as the nuisance continues, regardless of his subsequent possession or control.

PARENT AND CHILD—WRONGFUL DEATH—MOTHER OF ILLEGITIMATE CHILD NOT ENTITLED TO SUE.—In an action for the wrongful death of an illegitimate child under a statute permitting suit for the benefit of the parent, *held,* the mother cannot recover. *State for use of Smith* v. *Hagerstown & Frederick Ry. Co.* (Md. 1921) 114 Atl. 729.

The question in this case is purely statutory. Where a statute expressly permits the natural mother of an illegitimate to bring an action for its wrongful death, there is no doubt about a recovery. *Croft* v. *Cotton Oil Co.* (1909) 83 S. C. 232, 65 S. E. 216. And where a statute expressly legitimates the child as regards the mother the same is true. *Thompson* v. *Dela., L. & W. R. R.* (1910) 41 Pa. Super. Ct. 617. Where the wrongful death statute permits an action for the benefit of the next of kin, recovery is allowed provided a statute exists allowing inheritance by and from bastards through the maternal line. *L. T. Dickason Coal Co.* v. *Liddil* (1911) 49 Ind. App. 40, 94 N. E. 411. Where the wrongful death statute allows the mother to maintain the action, and a statute provides for inheritance by and from the bastard from and to the natural mother, she may recover. *Hadley* v. *City of Tallahassee* (1914) 67 Fla. 436, 65 So. 545; *cf. Galveston, etc. Ry.* v. *Walker* (1907) 48 Tex. Civ. App. 52, 106 S. W. 705; *contra, Robinson* v. *Georgia R. R.* (1903) 117 Ga. 168, 43 S. E. 452. But where a statute defines children to exclude illegitimates, no recovery is allowed. *Runt* v. *Illinois Cent. R. R.* (1906) 88 Miss. 575, 41 So. 1. And where the natural mother does not inherit from her illegitimate child she cannot recover. *Railway* v. *Williams* (1900) 78 Miss. 209, 28 So. 853. In the instant case the action is brought for the benefit of the parent in a jurisdiction where a natural mother can inherit from her illegitimate child. *Cf. Barron* v. *Zimmerman* (1912) 117 Md. 296, 299, 83 Atl. 258. In denying a recovery it will be seen that the Maryland court is in opposition to the weight of authority.

RESTRICTIVE AGREEMENTS—INNOCENT PURCHASER FOR VALUE NOT BOUND.—T, in selling plots from a larger tract, agreed with the plaintiff grantees that the land reserved, as well as that conveyed, should be restricted. The defendant is a purchaser from a grantee of T of another plot from the tract in question; but neither the defendant's nor his grantor's deed contained any mention of the restriction. On